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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/626,430	07/27/2000	David F. Bantz	YOR9-2000-0316	9978
29683 7590 10/16/2007 HARRINGTON & SMITH, PC 4 RESEARCH DRIVE SHELTON, CT 06484-6212			EXAMINER NEURAUTER, GEORGE C	
			ART UNIT 2143	PAPER NUMBER
			MAIL DATE 10/16/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/626,430	Applicant(s) BANTZ ET AL.	
	Examiner George C. Neurauter, Jr.	Art Unit 2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 36-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-35 are currently presented and have been examined.

Claims 36-40 have been withdrawn from consideration.

Response to Arguments

Applicant's arguments with respect to claims 1-35 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-24 and 27-34 recite provisioning at least one client computer of the customer in accordance with constraints imposed by the SLA. It is unclear as to what particularly is being provisioned.

Claims 1-35 recite "the constraints of the SLA". It is unclear what constraints are being referred to and, in the case

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of claims 1-24 and 27-34, how such provisioning occurs with these constraints.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-5, 7-8, 10-11, 17-19, 21-22, 24-28, 30-32, and 34-35 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 7,054,943 B1 to Goldzschmidt et al.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

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Regarding claim 1, Goldzschmidt disclosed a method for service provisioning a customer with at least one software application from a service provider, comprising steps of:

establishing a set of attributes ("metrics") of a service provision; selecting from said set of attributes for defining a Service Level Agreement (SLA) with the service provider; and provisioning at least one client computer of the customer in accordance with constraints imposed by the SLA. (see at least column 1, lines 34-51; column 3, line 1-column 4, line 4, specifically column 3, lines 1-13)

Claim 27 is also rejected since this claim recites a system that contains substantially the same limitations as recited in claim 1.

Regarding claim 25, Goldzschmidt disclosed a method for service provisioning a customer with at least one software application from a service provider, comprising steps of:

establishing a set of attributes ("metrics") of a service provision; selecting from said set of attributes for defining a Service Level Agreement (SLA) with the service provider; provisioning the customer, within the constraints imposed by the SLA, by allocating at least some required data processing resources to at least one data processing site that offers data processing capacity for use; and transparently re-provisioning

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the customer, within the constraints imposed by the SLA, by re-allocating at least some required data processing resources from the at least one data processing site that offers data processing capacity for use to one of the customer, the service provider, or another service provider. (see at least column 1, lines 34-51; column 2, lines 46-61; column 3, line 1-column 4, line 4, specifically column 3, lines 1-13)

Claims 26 and 35 are also rejected since these claims recite substantially the same limitations as recited in claim 25.

Regarding claim 3, Goldzschmidt disclosed a method as in claim 1, and further comprising a step of re-provisioning the customer, within the constraints imposed by the SLA, in response to at least one customer service-related criterion (the customer's changing requirements for its applications; see also column 1, lines 34-44 and 55-60). (see at least column 2, lines 46-61)

Regarding claim 4, Goldzschmidt disclosed a method as in claim 1, and further comprising a step of re-provisioning the customer, within the constraints imposed by the SLA, in response to at least one service provider criterion (the requirement that the service provider maintain proper resources for the

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customer's applications; see column 1, lines 34-44 and 55-60).

(see at least column 2, lines 46-61)

Regarding claim 5, Goldzschmidt disclosed a method as in claim 1, wherein the step of provisioning the customer includes a step of allocating service provider data processing resources to a data processing task of the customer. (see at least column 2, lines 46-61)

Regarding claim 7, Goldzschmidt disclosed a method as in claim 1, wherein the step of provisioning the customer includes a step of allocating data processing resources of another service provider ("optional servers"; see column 1, line 65-column 2, line 2) to a data processing task of the customer. (see at least column 2, lines 46-61)

Regarding claim 8, Goldzschmidt disclosed a method as in claim 1, wherein the step of provisioning the customer includes a step of allocating all required data processing resources from at least one other service provider to a data processing task of the customer. (see at least column 2, lines 46-61, wherein "the resources receives a minimum...amount of resources as specified under a...SLA"; see also column 6, lines 59-65)

Regarding claim 10, Goldzschmidt disclosed a method as in claim 1, and further comprising a step of re-provisioning (based on customer demand) the customer, within the constraints imposed

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by the SLA, by allocating at least some required data processing resources from at least one other service provider ("optional servers"; see column 1, line 65-column 2, line 2) to a data processing task of the customer. (see at least column 2, lines 46-61)

Regarding claim 11, Goldzschmidt disclosed a method as in claim 1, and further comprising a step of re-provisioning (based on customer demand) the customer, within the constraints imposed by the SLA, by allocating at least some required data processing resources from the service provider to a data processing task of the customer. (see at least column 2, lines 46-61)

Regarding claim 17, Goldzschmidt disclosed a method as in claim 1, wherein the service provider is a virtual service provider, and wherein the step of provisioning the customer, within the constraints imposed by the SLA, includes a step of allocating at least some required data processing resources from at least one other service provider ("optional servers"; see column 1, line 65-column 2, line 2) to a data processing task of the customer. (see at least column 2, lines 46-61)

Regarding claim 18, Goldzschmidt disclosed a method as in claim 1, wherein the service provider is a value-added services provider, and wherein the step of provisioning the customer, within the constraints imposed by the SLA, includes a step of

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allocating at least some required data processing resources from at least one other service provider ("optional servers"; see column 1, line 65-column 2, line 2) to a data processing task of the customer. (see at least column 2, lines 46-61)

Regarding claim 19, Goldzschmidt disclosed a method as in claim 1, wherein the service provider is a value-added services provider, and wherein the step of provisioning the customer, within the constraints imposed by the SLA, includes a step of allocating at least some required data processing resources from data processing resources of the value-added services provider, and from at least one other service provider ("optional servers"; see column 1, line 65-column 2, line 2), to a data processing task of the customer. (see at least column 2, lines 46-61) (note all such resources are pooled together)

Regarding claim 21, Goldzschmidt disclosed a method as in claim 1, and further comprising a step of re-provisioning the customer, within the constraints imposed by the SLA, in response to a change in data processing resource utilization. (see at least column 2, lines 46-61) (see also column 1, lines 34-44 and 55-60)

Regarding claim 22, Goldzschmidt disclosed a method as in claim 1, and further comprising a step of re-provisioning the customer, within the constraints imposed by the SLA, in response

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to a change in predicted or actual data processing resource availability. (see at least column 2, lines 46-61) (see also column 1, lines 34-44 and 55-60)

Regarding claim 24, Goldzschmidt disclosed a method as in claim 1, wherein the service provider is a virtual service provider, and wherein the step of provisioning the customer, within the constraints imposed by the SLA, includes a step of allocating at least some required data processing resources from at least one data processing site that offers data processing capacity for use in satisfying data processing requirements of the customer ("optional servers"; see column 1, line 65-column 2, line 2). (see at least column 2, lines 46-61)

Regarding claim 28, Goldzschmidt disclosed a system as in claim 27, wherein said system management server is responsive to at least one of a customer service-related criterion, a service provider criterion, or a change in a data processing environment (see column 1, lines 34-44 and 55-60 and column 2, lines 46-61), for re-provisioning the customer, within constraints imposed by said SLA, by allocating service provider data processing resources to a data processing task of the customer, or by allocating customer data processing resources to a data processing task of the customer, or by allocating data processing resources of another service provider to a data

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processing task of the customer, or by allocating all required data processing resources from at least one other service provider to a data processing task of the customer, or by allocating data processing resources from a remote data processing site to a data processing task of the customer. (see at least column 2, lines 46-61)

Regarding claim 30, Goldzschmidt disclosed a system as in claim 27, wherein the service provider is a virtual service provider, and wherein the customer is provisioned and re-provisioned, within the constraints imposed by the SLA, by allocating at least some required data processing resources from at least one other service provider ("optional servers"; see column 1, line 65-column 2, line 2) to a data processing task of the customer. (see at least column 2, lines 46-61)

Regarding claim 31, Goldzschmidt disclosed a system as in claim 27, wherein the service provider is a value-added services provider, and wherein the customer is provisioned and re-provisioned, within the constraints imposed by the SLA, by allocating at least some required data processing resources from at least one other service provider ("optional servers"; see column 1, line 65-column 2, line 2) to a data processing task of the customer. (see at least column 2, lines 46-61)

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Regarding claim 32, Goldzschmidt disclosed a system as in claim 27, wherein the service provider is a value-added services provider, and wherein the customer is provisioned and re-provisioned, within the constraints imposed by the SLA, by allocating at least some required data processing resources from data processing resources of the value-added services provider, and from at least one other service provider, to a data processing task of the customer. (see at least column 2, lines 46-61) (note all such resources are pooled together)

Regarding claim 34, Goldschmidt disclosed a system as in claim 27, wherein the customer is re-provisioned, within the constraints imposed by the SLA, in response to a change in at least one of data processing resource utilization, a change in predicted or actual data processing resource availability, or a failure of a data processing resource. (see at least column 2, lines 46-61)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the

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art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goldzschmidt.

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Regarding claim 2, Goldzschmidt disclosed a method as in claim 1.

Goldzschmidt does not expressly disclose a step of re-provisioning the customer in response to a change in the SLA, however, Goldzschmidt does disclose re-provisioning of the customer based on server resources and that such provisioning is based on an SLA that is agreed upon. (see at least column 1, lines 39-44; column 2, lines 46-61; column 3, lines 1-13)

It would have been obvious to one of ordinary skill in the art that an SLA may change when the needs of a customer changes and requires that the SLA be renegotiated since Goldzschmidt discloses that customers require a guarantee of service with a service provider, creating the basis of a SLA, and one of ordinary skill in the art would have considered it to be obvious that the SLA may change in scope and, when it did, the disclosures of Goldzschmidt would have predictably re-provisioned the customer when the constraints of the SLA changed.

Conclusion

It is noted that the column, line, and/or page number citations used in the prior art references as applied by the Examiner to the claimed invention are for the convenience of the Applicant to represent the relevant teachings of the prior art.

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The prior art references may contain further teachings and/or suggestions that may further distinguish the citations applied to the claims, therefore, the Applicant should consider the entirety of these prior art references during the process of responding to this Office Action. It is further noted that any alternative and nonpreferred embodiments as taught and/or suggested within the prior art references also constitute prior art and the prior art references may be relied upon for all the teachings would have reasonably suggested to one of ordinary skill in the art. See MPEP 2123.

The prior art listed in the PTO-892 form included with this Office Action disclose methods, systems, and apparatus similar to those claimed and recited in the specification. The Examiner has cited these references to evidence the level and/or knowledge of one of ordinary skill in the art at the time the invention was made; to provide support for universal facts and the technical reasoning for the rejections made in this Office Action including the Examiner's broadest reasonable interpretation of the claims as required by MPEP 2111 and to evidence the plain meaning of any terms not defined in the specification that are interpreted by the Examiner in accordance with MPEP 2111.01. The Applicant should consider these cited references when preparing a response to this Office Action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Neurauter, Jr. whose telephone number is 571-272-3918. The examiner can normally be reached on Monday-Friday 9am-5:30pm.

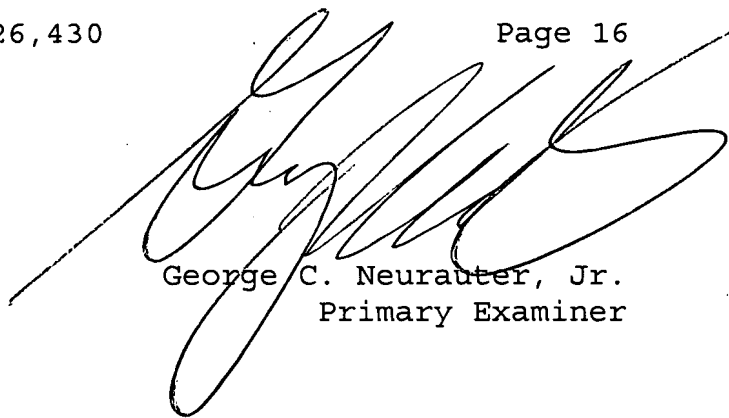
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley, can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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George C. Neurauter, Jr.
Primary Examiner